

§ 36C-4B-6. Administrative provisions applicable to charitable remainder unitrusts only.

(a) **Creation of Unitrust Amount for a Period of Years or Life.** – The trustee shall pay to the beneficiaries named in the trust investment in each taxable year of the trust during their lives or, if the governing instrument so provides, for a period not exceeding 20 years, a unitrust amount equal to a fixed percentage, as stated in the governing instrument of the trust, of the net fair market value of the trust assets valued annually on the date or by the method designated in the governing instrument of the trust or, if no date or method is specified, on the date or by the method selected by the trustee in the trustee's discretion, so long as the same valuation date or dates or valuation methods are used each year. The unitrust amount is paid annually or in more frequent equal or unequal installments if the governing instrument so provides. The unitrust amount is paid from income and, to the extent that income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the unitrust amount is added to principal. The fixed percentage to be paid at least annually to all beneficiaries cannot be less than five percent (5%).

(b) **Unitrust Amount Expressed as the Lesser of Income or a Fixed Percentage.** – If the governing instrument of the trust provides that the trustee shall pay, instead of a regular unitrust amount (the fixed percentage of the net fair market value of the trust assets, determined annually), the amount of trust income for the taxable year to the extent that this amount is not greater than the amount required to be distributed as a regular unitrust amount for that taxable year or the amount of the trust income for the taxable year that exceeds the regular unitrust amount for that taxable year to the extent that the aggregate of the amounts paid in prior years is less than the aggregate of the regular unitrust amount for those prior years, then the trustee must pay to the beneficiaries in each taxable year of the trust during their lives, or for a period not exceeding 20 years if the trust agreement so provides, an amount equal to the lesser of (i) the trust income for the taxable year, as defined in section 643(b) of the Internal Revenue Code and the regulations under that section, and (ii) the percentage, as stated in the governing instrument, of the net fair market value of the trust assets valued as of the taxable year decreased as elsewhere provided if the taxable year is a short taxable year or is the taxable year in which the noncharitable interest terminates by death or otherwise, and increased as elsewhere provided if additional contributions are made in the taxable year.

If the governing instrument of the trust so provides and if the trust income for any taxable year exceeds the amount determined under (ii) above, the payment to beneficiaries also must include the excess income to the extent that the aggregate of the amounts paid to beneficiaries in prior years is less than the percentage of the aggregate net fair market value of the trust assets, which percentage is defined in the governing instrument of the trust, for these years. Payments to beneficiaries must be made annually or in more frequent equal or unequal installments if the governing instrument so provides. Any income of the trust in excess of these payments must be added to principal.

(c) **Adjustment for Incorrect Valuation.** – If the fiduciary incorrectly determines the net fair market value of the trust assets for any taxable year, the trustee must, within a reasonable period after the final determination of the correct value, pay to the beneficiaries, in the case of an undervaluation, or receive from the beneficiaries, in the case of an overvaluation, an amount equal to the difference between the unitrust amount properly payable and the unitrust amount actually paid.

(d) **Computation of Unitrust Amount in Short and Final Taxable Years.** – For a short taxable year and for the taxable year in which the noncharitable beneficiary's interest terminates by death or otherwise, the trustee shall prorate the unitrust amount on a daily basis. If a trust provides for a valuation date other than the first day of the taxable year, and the valuation date does not occur in a taxable year of the trust because the taxable year is either a short taxable

year or is the taxable year in which the noncharitable interests terminate, the trust assets must be valued as of the last day of the short taxable year or the day on which the noncharitable interests terminate, as appropriate.

(e) Additional Contributions. – If the governing instrument does not prohibit additional contributions and additional contributions are made to the trust after the initial contribution in the trust, the unitrust amount for the taxable year in which the additional contributions are made must be a fixed percentage, as stated in the governing instrument of the trust, of the sum of (i) the net fair market value of trust assets, excluding the additional contributions and any income from or appreciation of these contributions and (ii) that proportion of the value of the additional contributions excluded under (i) which the number of days in the period beginning with the date of contribution and ending with the earlier of the last day of the taxable year or the day the noncharitable beneficiary's interest terminated bears to the number of days in the period beginning on the first day of the taxable year and ending with the earlier of the last day in the taxable year or the day the noncharitable beneficiary's interest terminated. If no valuation date occurs after the contributions are made, the assets so added are valued as of the time of contribution.

(f) Deferral of Unitrust Amount During Period of Administration or Settlement. – When property passes to the trust at the death of the settlor, the obligation to pay the unitrust amount commences with the date of the settlor's death, but payment of the unitrust amount may be deferred from the date of the settlor's death to the end of the taxable year of the trust in which complete funding of the trust occurs. Within a reasonable time after the end of the taxable year in which the complete funding of the trust occurs, the trustee must pay to the beneficiary, in the case of an underpayment, or must receive from the beneficiary, in the case of an overpayment, the difference between:

- (1) Any unitrust amounts actually paid, plus interest on those amounts computed at ten percent (10%) a year, compounded annually; and
- (2) The unitrust amounts payable, determined under the method described in section 1.664-1(a)(5) of the federal income tax regulations, plus interest on those amounts computed at ten percent (10%) a year, compounded annually.

Notwithstanding the foregoing sentence, in computing any underpayment or overpayment of the unitrust amounts, if the governing instrument was executed or last amended before August 9, 1984, and if the governing instrument does not specify that a ten percent (10%) rate of interest shall be used, the underpayment or overpayment of the unitrust amounts shall be computed using an interest rate of six percent (6%) a year, compounded annually.

(g) Unitrust Amount May Be Allocated Among Class of Noncharitable Beneficiaries in Discretion of Trustee. – If the governing instrument of the trust provides that the unitrust amount may be allocated to a class of noncharitable beneficiaries in the discretion of the trustee, then the trustee must pay, in each taxable year of the trust, the unitrust amount to the member or members of the class of noncharitable beneficiaries in amounts and proportions as the trustee in the trustee's absolute discretion shall from time to time determine until the last of the noncharitable beneficiaries dies. The trustee may pay the unitrust amount to any one member of the class or may apportion it among the various members in a manner that the trustee shall from time to time consider advisable as long as the power to allocate does not cause any person to be treated as the owner of any part of the trust under the rules of section 671 through section 678 of the Internal Revenue Code. If the class provided for in the governing instrument is open, the distribution must be for a period not exceeding 20 years, notwithstanding a provision to the contrary in the trust instrument. If the class provided for in the governing instrument is closed at the creation of the trust, and all members of the class are ascertainable, the distribution may be for the lives of the members of the class or for a period

not exceeding 20 years. The trustee shall pay the entire unitrust amount for each taxable year annually and may not delay payment of the unitrust amount.

(h) Reduction of Unitrust Amount if Part of Corpus Is Paid to Charity at Expiration of Term of Years or on Death of a Recipient. – If the governing instrument of the trust provides for the reduction of the unitrust amount if part of the corpus is paid to charity at the expiration of a term of years or upon the death of a recipient, then during the term of years or during the joint lives of the noncharitable beneficiaries the trustee shall, in each taxable year of the trust, pay the total unitrust amount equal to a percentage of the net fair market value of the trust assets valued annually, which shall not be less than five percent (5%). Upon expiration of the term of years or the death of a recipient, the trustee shall distribute an amount or percentage of the trust assets, as provided in the governing instrument of the trust, to the charity named in the governing instrument, and thereafter the trustee shall pay to the survivors for their lives a unitrust amount in each taxable year of the trust equal to at least five percent (5%)(the actual percentage being defined in the trust instrument) of the net fair market value of the remaining trust assets valued annually.

(i) Termination of Unitrust Amount on Payment Date Preceding Termination of Noncharitable Interests. – If the governing instrument of the trust provides that payment of the unitrust amount may terminate with the regular payment preceding the termination of all noncharitable interests, then the trustee must pay the unitrust amount to the noncharitable beneficiary in each taxable year of the trust during the term of the noncharitable interest. The obligation of the trustee to pay the unitrust amount terminates with the payment preceding the termination of the noncharitable interest by death or otherwise. The five percent (5%) requirement provided in subsection (a) of this section shall be met until the termination of all payments of the unitrust amount.

(j) Retention of Testamentary Power to Revoke Noncharitable Interest. – If the governing instrument of the trust provides that the settlor of the trust shall retain the power, exercisable only by will, to revoke or terminate the interest of any recipient other than an organization described in section 170(c) of the Internal Revenue Code, then the trustee must pay the unitrust amount to the settlor during the settlor's life and, upon the death of the settlor, shall pay the unitrust amount to the noncharitable beneficiary during the charitable beneficiary's life, provided the noncharitable beneficiary survives the settlor. The settlor shall have the power, exercisable only by will, to revoke and terminate the interest of the noncharitable beneficiary under the trust. Upon the first to occur of (i) the death of the survivor of the settlor and the noncharitable beneficiary; or (ii) the death of the settlor if the settlor effectively exercised the testamentary power to revoke and terminate the interest of the noncharitable beneficiary, the trustee shall distribute all of the then principal and income of the trust, other than any amount due the noncharitable beneficiaries, to the charity named in the trust document or, if the governing instrument so provides, the trustee shall continue to hold the principal and income in trust for the charity or for the charitable purposes specified in the trust. No other retained power to terminate an interest in the trust is effective. (1981 (Reg. Sess., 1982), c. 1252, s. 1; 1985, c. 406, s. 7; 2005-192, s. 2.)